

Special General Tribal Council Meeting

Sunday, Dec. 15, 2013

1 p.m.



Oneida Radisson Hotel & Conference Center

2040 Airport Drive

Green Bay, Wisconsin 54313

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GENERAL TRIBAL COUNCIL MEETING INFORMATION

DATE AND TIME

1 p.m. Sunday, Dec. 15, 2013
Registration begins 11 a.m.

LOCATION

Radisson Hotel & Conference Center
2040 Airport Drive
Green Bay, WI 54313

TO ATTEND THE MEETING

You must be an enrolled Tribal member at least 21 years old to attend the meeting.

PHOTO ID REQUIRED

To get your tribal identification card, call the Oneida Enrollment Office at:

(920) 869-6200.

Office hours and location:

8 a.m. to 4:30 p.m. weekdays

210 Elm St. Oneida, WI 54155

FOOD AND BEVERAGES

If you have medical needs, **please bring your own food and beverages** to ensure you are prepared if the meeting runs longer than 3 hours. Some food and beverages will be available for sale.

GTC MEETING STIPEND

To be eligible to receive the \$100 GTC meeting stipend, meeting attendees must be in line to register for the meeting no later than 15 minutes after the start of the meeting and sign out after the meeting adjourns.

QUESTIONS OR CONCERNS

In the event of inclement weather or other unforeseen circumstances, call (920) 869-4364

MEETING MATERIALS

Meeting materials will not be available at the meeting. To get copies of the agenda and meeting materials, go to the Tribe's Members Only webpage at:

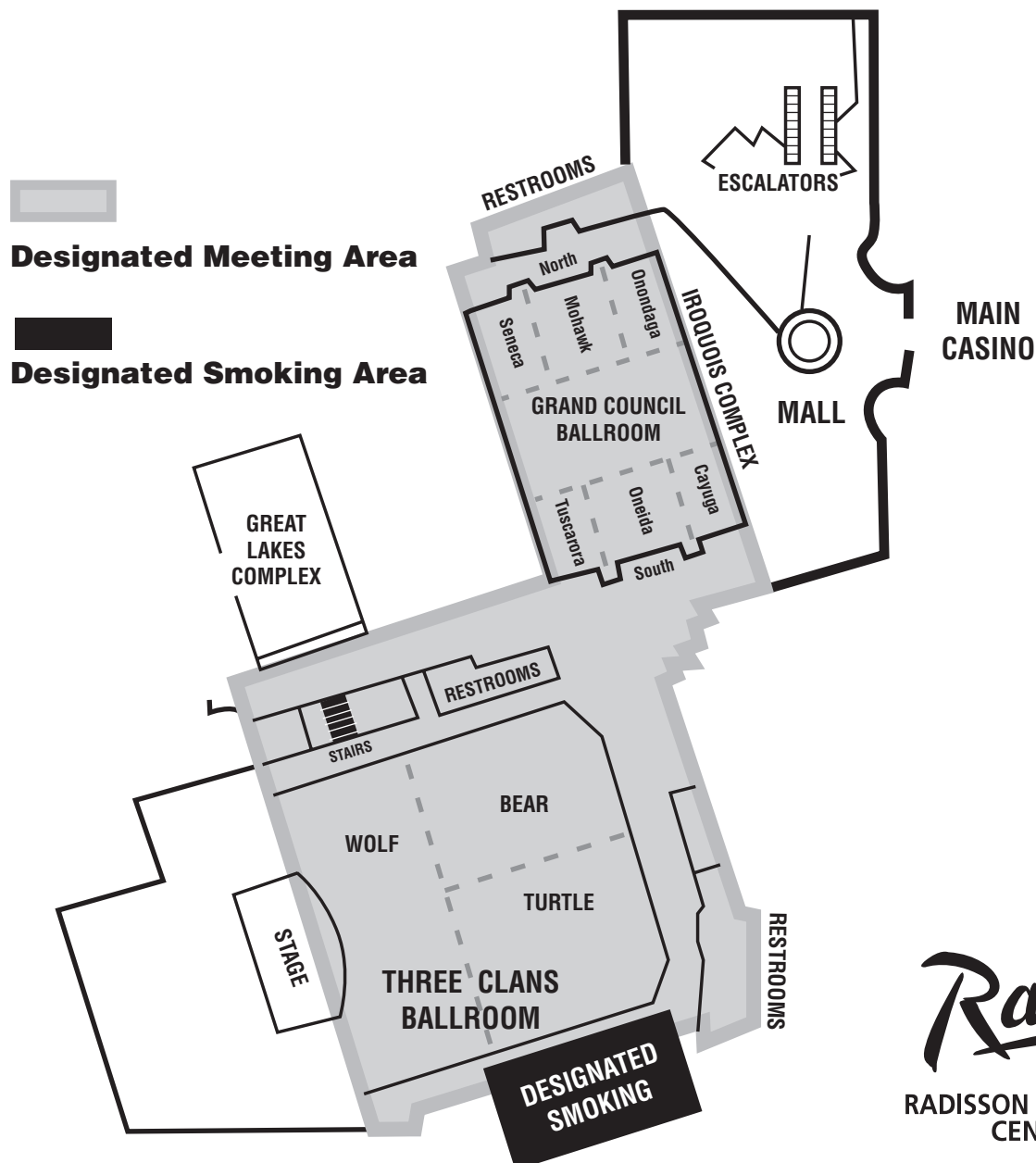
[HTTPS://ONEIDA-NSN.GOV/MEMBERSONLY.ASPX](https://oneida-nsn.gov/membersonly.aspx)

EXITING SAFETY INFORMATION

When the meeting is adjourned, please remain seated until your section is released by the Tribal Chairman

Designated GTC Meeting Area

- Meeting attendees must remain inside the designated meeting area or smoking area to remain eligible to receive the meeting stipend.
- You must be an enrolled Oneida tribal member and 21 years or older to be in the designated meeting area.
- See the attached GTC Meeting Stipend Payment Policy for more information.



General Tribal Council Special Meeting

1 p.m. Sunday, Dec. 15, 2013

- 1. Oneida Veterans Color Guard posting of the colors**
- 2. Opening and announcements**
- 3. Adopt the agenda**
 - a. Approve attendance in meeting of representatives from McGladrey and Pullen who will give the financial analysis in regard to the petition
- 4. New Business**
 - a. **Petitioner Frank Cornelius:** General Tribal Council directs the Business Committee to dissolve the Oneida Seven Generations Corporation based on the Law Office's March 2013 finding that the OSGC's corporate charter identifies that the shareholder (i.e. the Tribe) , as represented by the Oneida Business Committee, can dissolve the corporation (petition submitted 7/9/13)
- 5. Adjourn**

MEMORANDUM

TO: General Tribal Council
FROM: Patty Ninham Hoeft, Tribal Secretary
DATE: Nov. 5, 2013
RE: Certification of sufficiency of petition signatures submitted by Tribal member Frank Cornelius

Purpose: To certify that the sufficient number of petition signatures were submitted by petitioner Frank Cornelius and explain why a photocopy of the petition signatures was not included in this packet of materials that was mailed to every Tribal member 21 and older.

Certification of Sufficient Petition Signatures: Tribal member Frank Cornelius submitted a petition to the Tribal Secretary Office on July 9, 2013. Of the 364 signatures submitted, 353 were verified as valid on July 10, 2013 by the Oneida Enrollment Office. The petition was 44 pages in length. Number of signatures found invalid were 11:

- 1 signature-member not 21 years old
- 1 signature-not found
- 1 signature-no match date of birth to enrollment number
- 8 signatures-duplicates

Explanation: A photocopy of this petition was not included in this paper meeting packet mailed to Tribal members to ensure the copying of materials could be completed to meet our required public noticing deadline and secondly, as a way to reduce the cost of producing and mailing this meeting packet. A copy of the 44-page petition can be accessed by going to the Tribe's Members-Only website or calling the Tribal Secretary Office. A copy of the petition statement is provided here:

PETITION FORM

NAME OF PETITIONER: Frank Cornelius

PURPOSE: General Tribal Council directs the Business Committee to dissolve Oneida Seven Generations Corporation based on the Law Office's March 2013 finding that OSGC's Corporate Charter identifies that the shareholder (i.e. the Tribe), as represented by the Business Committee, can dissolve the corporation.

DATE SUBMITTED TO ONEIDA TRIBAL SECRETARY: _____

Please Print Clearly - Use Full Given Name

JUL 9 2013
ONEIDA TRIBE OF INDIANS OF WISCONSIN

To get a copy of the petition signatures, call the Tribal Secretary Office at (920) 869-4364 or go to the Tribal Members Only website at: <https://www.oneida-nsn.gov/MembersOnly.aspx>

If you have any questions, please call Tribal Secretary Patty Ninham Hoeft at (920) 869-4364. Yaw^ko.

To: General Tribal Council

From: Franklin L. Cornelius, USMC Retired

Date: November 12, 2013

Re: Seven Generations

I BELIEVE THAT SEVEN GENS SHOULD BE DISSOLVED FOR NON-COMPLIANCE

They have not complied with INDIVIDUALS, the CHAIRMAN, the BC, the GTC, their own CHARTER, the AUDITORS or with the ONEIDA CONSTITUTION

NON-COMPLIANCE WITH INDIVIDUALS THAT ASKED

- Who are the owners?
- Who are the board members?
- Who are the investors (Indian and Non-Indian)?
- Who are the stockholders?
- What companies are selling to 7 Gens?
- Why is there is no full disclosure?
- Why are they not giving information in accordance with GTC 11-15-08C?
- Why are there no treasurer reports?
- Why are they are not following resolutions?
- Why haven't they provided or set up access to 7 Gens reports?
- Why haven't they provided complete information to the auditors?

NON-COMPLIANCE WITH THE BUSINESS COMMITTEE REQUESTS

- They have provided only incomplete reports to BC and GTC.
- They have withheld full disclosure of owners of LLC's
- They have withheld full disclosure of ALL current and former Board members and BC members.
- They have failed to provide a business plan.
- They have not provided the names of individuals or businesses doing business with them.
- Who owns Oneida Energy?
- Who are the investors?
- Who are the stockholders?
- Will stock be offered to Tribal members?
- Who will assure the project?
- Who is getting paid for each LLC?
- What is Oneida Energy using for collateral?
- Does 7 Gens have assets co-mingled with Tribal property?
- Who will oversee investors and stockholders?
- Is 7 Gens getting dual compensation?
- Who owns Broadway Manufacturing, LLC?

NON-COMPLIANCE WITH GTC RESOLUTION

- 7-11-94A Defines the duties of Treasurer at each of the meetings.
Report on all funds, including special funds.
- 11-15-08B Directed BC to get ALL: Reports, businesses run by the corp.,
balance sheets and income statements.
Directed BC to review for:
Effectiveness and efficiency
- 11-15-08C Directed Treasurer to:
Report all special funds (7 Gens), Report all to GTC members, Directed
Treasurer to include audit reports
Report ALL receipts and debits
Directed Treasurer to include financial statements from:
Autonomous entities, Limited Liability Companies, state Chartered
Corp., Tribal Economic Development Authority, boards, committees,
commissioners, vendors, consultants owned in full or in part by the
Tribe.
Directed implementation by December 2008
Requested a Treasurer's Report at every meeting.

THEY HAVE NOT COMPLIED.

NON-COMPLIANCE WITH AUDITORS

The auditors are stating that 7 Gens is not complying with accounting principles generally accepted in the United States of America, not even the basic information for a good audit.

NON-COMPLIANCE WITH THEIR OWN CHARTER

Article IX - Distribution and Profits. (B) Give 75% back to the Tribe. NOT COMPLYING.

Article XIII - Reports. NOT COMPLYING.

Article XIV - Audits. Audits are to generally accepted auditing procedures. NOT COMPLYING.

XVI Amendments. NOT COMPLYING.

XVII - Limitation of Power. Corporation will comply with Tribe's regulations, NOT COMPLYING.

NON-COMPLIANCE WITH CONSTITUTION

Article IV - Powers of the General Tribal Council

Section I - Enumerated Powers:

Paragraph (C) Veto any sale.

7 Gens collected 1.7 million dollars in rent and used it to borrow more money. The constitution gives us the power to veto any encumbrance of Tribal assets.

7 Gens is the guarantor on bank notes totaling thousands of dollars, secured by real estate. Our constitution states that we can veto any encumbrance on our Tribal lands or property.

Article I - Duties of Officers

Section 4 - Treasurer of the Council

Report on all receipts and expenditures at each GTC meeting, or when requested.

IN 17 YEARS, THEY HAVE NOT COMPLIED.

The Business Committee itself and the Treasurer are in violation of our Oneida Constitution and their oath of office.

7 Gens has 3 full-time employees and 1 part-time for a total of 4 employees.

7 Gens has paid themselves \$617,215 in 2010, \$662,827 in 2011 and \$422,045 in 2012, for a total of \$1,702,087 or \$425,521 each.

7 Gens pay themselves \$250 for each meeting (a total of \$16,437 in 2012).

7 Gens has a line-item slush fund of \$36,816.

7 Gens will give away our rights to IEP and AITL.

7 Gens wants to set aside 50 acres of Tribal land for their own use.

7 Gens will give away our profits.

7 Gens has withheld information to the GTC on a \$2 million state loan.

7 Gens has made a 7-year agreement to have a Japanese firm operate our Tribal business.

7 Gens has used Tribal lands to obtain bank notes for all the failed LLC's.

7 Gens has used our rent money to borrow more money.

7 Gens has waived its sovereign immunity in all financial agreements.

7 Gens has used a Cummings generator to borrow money.

7 Gens has provided false information to the BC and GTC about paying back the \$19 million dollar loan. October 27, 2010, they said the Tribe can't be sued. BIA will collect the money from the Tribe.

On August 28, 2013, 7 Gens has given false information to the BC about marketing the project.

7 Gens has failed to comply with individual requests under the GTC Resolution 11-15-08-C.

7 Gens has failed to comply with the Chairman's request of March 15, 2011.

7 Gens has failed to comply with the Business Committee requests of October 7, 2010.

7 Gens has failed to comply with their own Charter on paying the Tribe back.

7 Gens has failed to comply with Article XIII Reports of their Charter. (Incomplete reports).

7 Gens has failed to provide the auditors Schenk with the necessary documents for a full audit.

7 Gens has failed to provide the auditors IBDO certified public accountants with the basic documents necessary to present fairly, the financial position of the Oneida Tribe of Indians of Wisconsin, as of September 30, 2012.

The Oneida Constitution does not allow our lands to be encumbered.

The Oneida Constitution does not allow our rent money to be collateralized.

If the GTC does not dissolve them, they are as guilty as the 7 Gens Board and the BC.

If you have knowledge of a crime and don't report it, you could go to jail and they could take away your home. "You are an accessory after the fact". They have violated the

Oneida Constitution, their Charter, withheld information from the auditors, not complied with the Business Committee and not complied to any individual. NOW YOU HAVE A CHOICE.

We can govern ourselves, and if we the people want to dissolve 7 Gens, we can do that, according to the Constitution. I believe that there is ample evidence to warrant a BIA investigation and federal audit of 7 Gens and I feel that there is probable cause to believe that there are many improprieties and possible fraud.

I am sorry that it has come to this but 7 Gens has not complied with the Chairman, not complied with the GTC resolution. They have failed to follow their own Charter. They have hidden behind LLC's. They have not disclosed to stockholders, not reported to all investors. They withheld information from the auditors. They have obtained loans without telling the people. They have violated the Oneida Constitution. They have used Tribal resources without paying them back and they have asked the Tribe to pay their legal fees.

We cannot sweep this under the rug anymore. We must revoke the 7 Gens' Charter now.

We are a nation of laws and as such, we must abide by those established laws. We must do three things:

First: Dissolve the 7 Gens immediately, in accordance with Article XV(B) of their charter and hold the officers responsible to repay all the debts they have incurred Article XV(C)

Second: Allow them the salary set forth in Article IV(B) of their charter. Direct the Business Committee and Tribal Attorney to take any and all action necessary to collect the rent/lease money that is due the Tribe in accordance with Article IX of their charter (75% of the net rent received) and Article IV, Section I, paragraph (c) of the Oneida Constitution, to include federal court, if necessary.

Third: Direct the Chairman to contact the Superintendant of the BIA and request an audit and federal investigation into the finances and real estate transactions of 7 Gens, in accordance with Article IV, Section I, sub-paragraph (e) and Section 3 and 4 of the Oneida Constitution.

Legislative Reference Office

P.O. Box 365
Oneida, WI 54155
(920) 869-4240
(800) 236-2214

**Committee Members**

Melinda J. Danforth
Vince DelaRosa
David P. Jordan
Paul Ninham
Brandon Stevens

Memorandum

TO: Oneida Business Committee
FROM: Michelle L. Mays, LRO Staff Attorney
DATE: August 28, 2013
RE: Legislative Analysis on Petition Regarding Dissolving Oneida Seven Generations Corporation

On July 9, 2013, Frank Cornelius submitted a petition to the Tribal Secretary's Office to "dissolve Oneida Seven Generations Corporation based on the Law Office's March 2013 finding that OSGC's Corporate Charter identifies that the shareholder (i.e. the Tribe), as represented by the Business Committee, can dissolve the corporation."

On July 24, 2013 the Oneida Business Committee (OBC) accepted the receipt of the petition and forwarded it for processing, which would include the completion of the appropriate analyses, which typically includes a legislative analysis. After reviewing the petition and completing a search for any Tribal Laws that would be impacted if Oneida Seven Generations Corporation is dissolved, it has been determined that this petition would not have a legislative effect, therefore a legislative analysis is not necessary at this time.

If you have any questions, please let me know.

JO ANNE HOUSE, PhD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER
SENIOR STAFF ATTORNEY

ONEIDA LAW OFFICE

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P.O. BOX 109
ONEIDA, WISCONSIN 54155

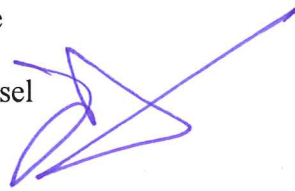
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ANDREW J. PYATSKOWIT
PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS

M E M O R A N D U M

TO: Oneida Business Committee
FROM: Jo Anne House, Chief Counsel
DATE: September 25, 2013
SUBJECT: Cornelius – Petition – Dissolution of Oneida Seven Generations Corporation



You have requested a legal opinion regarding a petition submitted by Frank Cornelius. The petition contains the following request.

General Tribal Council directs the Business Committee to dissolve Oneida Seven Generations Corporation based on the Law Office's March 2013 finding that OSGC's Corporate Charter identifies that the shareholder (i.e. the Tribe) as represented by the Business Committee can dissolve the corporation.

The Enrollment Department has verified a sufficient number of signatures are on the petition.

I have reviewed the corporate charter, prior legal opinions regarding corporations, the financing and organizational documents within the Oneida Seven Generations Corporation subsidiaries and partnerships, the lease agreements, and laws of the Tribe, and other documents to formulate this legal opinion. This is not a comprehensive review of every document and agreement regarding the Oneida Seven Generations Corporation. Copies of documents are included with this review except where confidentiality agreements would prohibit the release of the document.

Portions of this legal review have been forwarded to Oneida Seven Generations Corporation Board of Directors and acting Chief Executive Officer for review to protect against violation of confidentiality agreements.

Previous Petitions

There have been three previous occasions where the Oneida Seven Generations Corporation has been the subject of a petition before the General Tribal Council. The legal reviews of those petitions are listed below.

- *Genskow Petition – Resolution – Oneida Seven Generations Corporation*, July 10, 2008 Requesting financial disclosures, relationship disclosures, and a financial/operational audit.
- *Genskow Petition – Resolution – Oneida Seven Generations Corporation*, February 15, 2011 – Corrected

Requesting a report on government-to-government relationships impacted by corporate activities and consideration of modifying the corporate relationship with the Tribe.

NOTE: There are two errors in the February 15, 2011, legal review. First, the chart on page 8 erroneously refers to an earlier version of the proposed reporting format that the Oneida Business Committee did not adopt. The financial and disclosure reports are confidential, non-public documents to protect the business activities of the corporation because of the specificity of information the corporation is required to present. Second, the review erroneously refers to the “Oneida Industrial Park” which should be correctly referred to as the “Oneida Business Park.”

- *Dodge Petition – Land Use – Oneida Seven Generations Corporation, March 12, 2013 – Revised*

Request to stop waste-to-energy development.

NOTE: This legal review erroneously refers to the “Oneida Industrial Park” which should be correctly referred to as “Oneida Business Park.”

Each of the above legal opinions is included with this opinion for reference.

Corporate Partnerships and Subsidiaries

The July 10, 2008, legal review identified corporate properties and relationships of the Oneida Seven Generations Corporation. Figures 1 and 2 below identify the updated corporate relationships with partnerships and wholly-owned subsidiaries.¹ Figure 1 identifies those limited liability companies in which Oneida Seven Generations Corporation is working in partnership with a third party to accomplish a business activity.

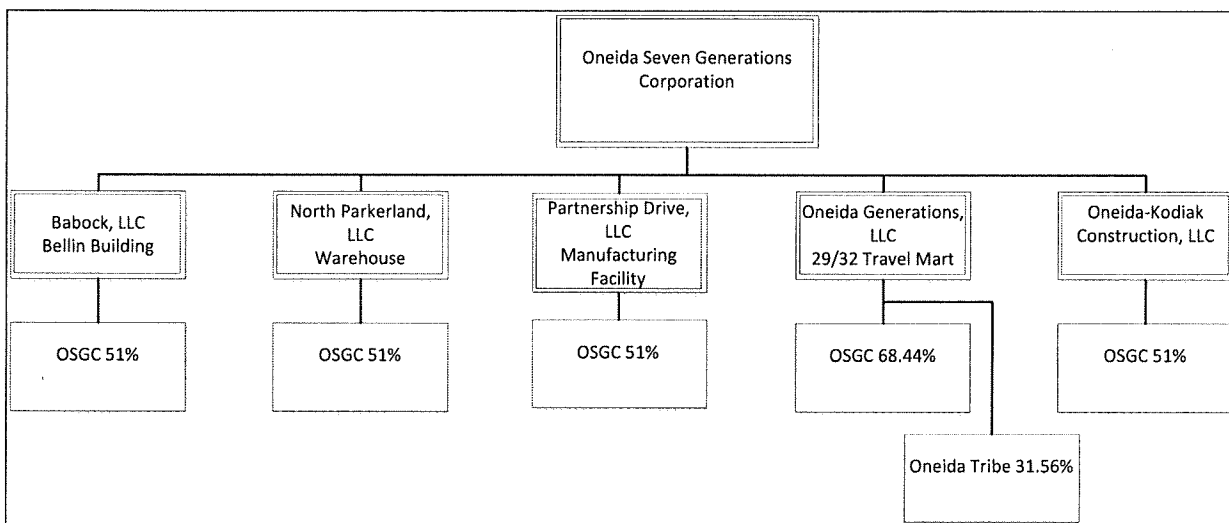


Figure 1. Corporate partnerships

¹ In addition to the companies listed in Figures 1 and 2, a search of the State of Wisconsin business registration system identifies O’Hare, LLC and Oneida Manufacturing, LLC with a principle office at Flight-way Drive, the offices of the Oneida Seven Generations Corporation. These companies are in the process of being dissolved, or should have been dissolved.

Figure 2 identifies those limited liability companies and corporations in which the Oneida Seven Generations Corporation owns the entire subsidiary.

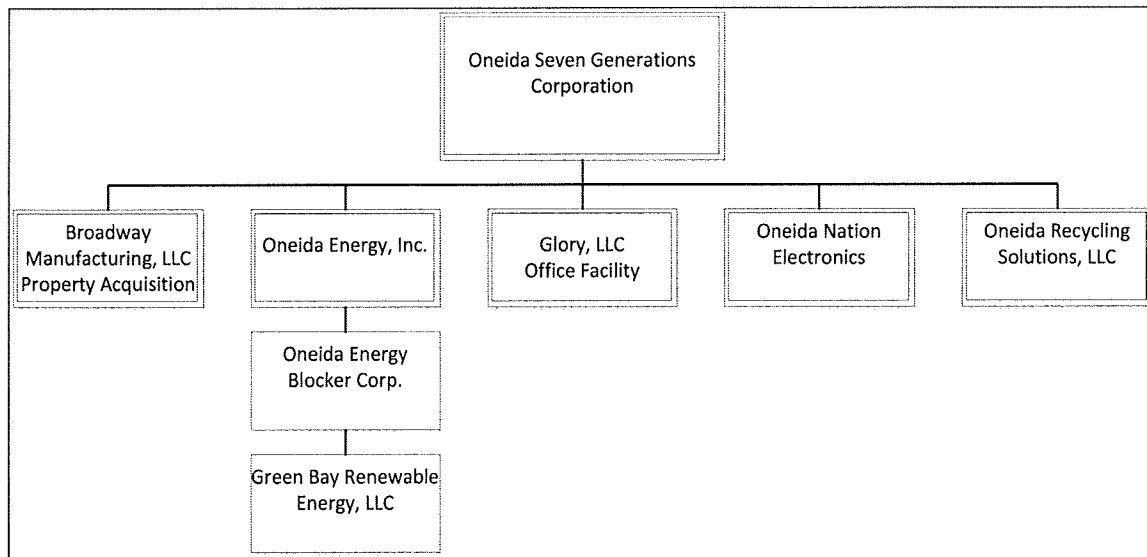


Figure 2. Wholly owned corporate subsidiaries.

Each entity is created in the State of Wisconsin by filing either corporate or limited liability company documents except for Oneida Energy Blocker Corporation and Green Bay Renewable Energy, LLC which were formed under the State of Delaware. This includes the requirement to file notice of a registered agent. The Oneida Seven Generations Corporation is the managing partner in the above companies, except Babcock, LLC in which the Oneida Seven Generations Corporation is not the active partner. In the past, the registered agent has been John Kroner as Chief Executive Officer, which was then changed to Kevin Cornelius as Chief Executive Officer, and is now in the process of being updated to Bruce King as acting Chief Executive Officer.

The Oneida Seven Generations Corporation creates companies for the purpose limiting liability to the assets allocated to and created by the new company. In addition, these companies also allow the Oneida Seven Generations Corporation to arrange business relationships to meet to the needs of the particular property and partnership. Finally, in some circumstances companies are created to take advantage of tax credits, investor opportunities and to allow additional partnerships to be developed or integrated into the company. In regards to those companies where the Oneida Seven Generations Corporation is the sole owner, the company is created for the purposes of limiting liability to the assets of the company.

In regards to energy business activities the corporation set up several entities. Initially Oneida Recycling Solutions, LLC was set up to operate the waste-to-energy plant when it was initially situated on the Reservation close to the Brown County Waste Transfer Station. It has had no other activities as it did not meet long-term business goals of the corporation regarding recycling and energy activities.

The corporation then created Oneida Energy, Inc. to manage all of these related activities. This general corporation would house all limited liability companies and other business entities in order to limit liabilities to the Oneida Seven Generations Corporation. It was created as a corporation to allow it access to various financing and tax incentives and currently carries a \$2 million loan from Wisconsin Economic Development Corporation and the \$2 million grant from the State of Wisconsin. The corporation is actively attempting to meet the requirements of the loan from the Wisconsin Economic Development Corporation and the grant from the State of Wisconsin, or, if unable to do so, the corporation is attempting to reduce the potential liabilities of not meeting the requirements.

However, to capture specific tax incentives and other business incentives related to the waste-to-energy project, the corporation created the Oneida Energy Blocker Corp. This company owns the limited liability company Green Bay Renewable Energy, LLC as the entity that would take on other investors. As a part of the waste-to-energy project Broadway Manufacturing, LLC was created to make an offer to purchase the Hurlbut Street location in order to avoid price escalation if the owner were made aware that the Tribe or a corporation of the Tribe was expressing interests. Ultimately, Broadway Manufacturing, LLC was only used for the offer to purchase and was not utilized for any other activity.

Each of the limited liability company organizational documents identifies language restricting the transfer of ownership value to another party. In all circumstances, the restriction requires the remaining partner to have the opportunity to purchase the value of the existing partner's shares at book value. Book value is the value of the assets listed on the balance sheet of the company and is calculated by deducting depreciation from the cost of the asset.

In accordance with the organizing documents, a member in the company can withdraw in two ways. A member may withdraw voluntarily with 180-day notice to the other members of the intent to sell the membership percentage. Alternatively, a member may withdraw involuntarily through bankruptcy or dissolution of the member corporation with 90-day notice to the other members of the involuntary withdrawal. During the notice period, the remaining member has the option to purchase the withdrawing member's interests at book value. In the alternative, the remaining member may choose to reject the sale and cause the dissolution of the company.

All of the organizing documents for the limited liability companies with third party members contain a confidentiality agreement and a waiver of sovereign immunity regarding Oneida Seven Generations Corporation.

Corporate Debt

The Oneida Seven Generations Corporation enters into contracts, employment agreements, lease agreements, and financial agreements in the course of its business activities. There were two groups of documents reviewed for the information provided in this section – corporate financing documents and the fiscal year 2012 audit of the corporation.

Corporate Financing Documents

I reviewed five financing documents of the corporation. Although there are likely more financing documents available, I requested the corporate officers to provide examples of typical financing it would enter into, as well as larger loans the corporation has entered into.

Corporation Financing

- \$150,000 line of credit at 5.350%
- \$250,000 line of credit at 4.5%
- \$601,778 line of credit at 5.330%
- \$401,752 line of credit at 4.940%

Limited Liability Company Financing

- \$4,375,000 line of credit – Oneida Generations (29/32 Travel Center)

All of the above financial agreements are collateralized by various master lease agreements and rental income from leases under those master lease agreements. All of the financing documents identify that a default on the loan occurs if there is any change in ownership in the company or an adverse change in the financial position or prospect of payment. The Oneida Seven Generations Corporation has waived its sovereign immunity in all financial agreements.

In addition to the above financing, the Oneida Seven Generations Corporation guaranties a \$2 million 2% interest loan for the Wisconsin Economic Development Corporation. Finally, the corporation has a debt owed directly to the Tribe originally set at \$750,000. However, the corporation drew down approximately \$375,000, the remainder of which was not used by the corporation and was withdrawn by the Tribe.

Fiscal Year 2012 Audit

A review of the 2012 fiscal year audit by the external audit firm of BDO. This audit was presented to the General Tribal Council at the July 2013 Semi-Annual General Tribal Council meeting. The audit identifies that the corporation maintains eight long term notes totaling approximately \$8 million. *FY2012 Audit, pg. 19*. Several of these notes were reviewed in the documents above. In addition to these loans, the corporation us a guarantor on approximately \$12.5 million in the various business relationships described above.

Oneida Tribe of Indians of Wisconsin

As the owner of the Oneida Seven Generations Corporation, the Tribe has the ability to dissolve the company. However, as identified in previous legal opinions, the decision to dissolve a corporation becomes progressively more complex as the corporation carries out business and as the Tribe's financial position changes. The effect of dissolving the Oneida Seven Generations Corporation on the Tribe occurs in three different ways. First, the liabilities of the corporation must be satisfied in accordance with existing agreements. Second, the actions of dissolving the corporation affect the Tribe's financial position. Finally, dissolution of the corporation affects the Tribe's ability to engage in business activities directly or through corporate structures.

Corporate Debt

The Oneida Seven Generations Corporation carries approximately \$20 million in debt whether directly or guaranteed through limited liability companies. As identified above, all of the debt is secured through rents on existing master lease agreements. The Tribe has approved the use of master leases for this purpose. In addition to the lease revenues, the financing agreements also authorize the bank to be repaid through all other accounts of the business.

If the Tribe dissolves the business, and similarly the limited liability companies, the use of corporate assets to pay "...debts and liabilities of the corporation ...[is taken] in the following order: (1) third parties perfected security interests; (2) security interests of the Oneida Nation; (3) third parties perfected interests." *Corporate Charter, Article XV(B)*. The 2012 audit of the corporation identifies \$9.7 million in net assets. It is possible to isolate the liabilities of the limited liability company as intended by the creation documents. However, doing so carries risk to the Tribe financially and through the ability to conduct business. This is discussed further below.

It should also be noted that for those partnerships with third parties (Babcock, LLC; North Packerland, LLC; Partnership Drive, LLC; and Oneida-Kodiak Construction, LLC) that the Tribe may be required to negotiate with those partners regarding maintaining the limited liability company or the value of dissolving the company. For example, if the partner in North Packerland, LLC chooses to reject the involuntary transfer of the Oneida Seven Generations Corporation membership to the Tribe, then the limited liability company will be forced to dissolve. In some circumstances, this may result in the Tribe having to negotiate book value of the shares of the partner.

Tribe's Finances

The Tribe has entered into loan and bond agreements based on the financial strength of the Tribe. That financial strength is based primarily on the gaming and retail revenues. However, it is in part based on the Tribe's diversification through corporate entities. In addition, the agreements are also based on calculated through financial ratios of cash flow, debts, and liabilities. It is not clear if the costs of the dissolution of the Seven Generations Corporation would result in a financial impact to the Tribe, the answer to this question is beyond the scope of this legal opinion.

Notwithstanding the actual financial impact, lending institutions for future project activities could hesitate to provide funding to the Tribe because of its actions regarding the dissolution of a tribal corporation. If the Tribe is unwilling to recognize obligations of corporate entities, lenders may be unwilling to jeopardize lending funds to the Tribe or may demand higher interest rates. This may be true even with clear waivers of tribal sovereign immunity contained in agreements.

Business Activities

The Tribe has authority to dissolve the corporation under the charter. However, doing so may result in greater difficulties in creating business relationships and contracting in the future. For example, will it be possible to enter into a business venture developing property where financing is needed or where both parties are called upon to utilize their own funding for start-up business

costs. It is not possible to answer these questions; however, it is important to note that these are strong potential consequences to dissolving a corporation.

Conclusion

It is within the authority of the General Tribal Council to direct the Oneida Business Committee to dissolve the Oneida Seven Generations Corporation. However, it should be identified that this dissolution could take significant time in light of existing agreements. Any time frame placed on dissolution should recognize that it may take as long as 12 months to complete such actions as:

- transferring all master leases
- renegotiating existing limited liability company memberships
- renegotiating financing agreements
- transferring tenant responsibilities and amending leases
- identifying and transferring corporate assets

Action to dissolve the corporation would require a simple majority vote as it affects no prior actions of the General Tribal Council.

If you have further questions, please contact me.

JO ANNE HOUSE
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL


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MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel 

DATE: July 10, 2008

SUBJECT: Genskow Petition - Resolution - Oneida Seven Generations Corporation

You have asked for a legal review of the above resolution included within a petition submitted by Madelyn Genskow. The resolution contains four Whereas sections and one Resolve containing four directives. The Oneida Seven Generations Corporation (*Seven Gens*) is the focus of this resolution.

The fourth Whereas identifies a special General Tribal Council meeting which occurred in May of 2005. The Whereas indicates that the Chairwoman was denied access to information from a Tribal corporation.

The Resolve contains a restriction on funding through Tribal resources until three additional directives are concluded.

1. Financial disclosures 'of any person or entity' requesting Tribal funds for Seven Gens.
2. Names of persons or entities with a financial interest in Seven Gens who wish to receive Tribal funds that are passing through Seven Gens.
3. A full operations audit and a full financial audit by an external auditor engaged by the Audit Committee presented to the General Tribal Council within 60 days.

To develop this opinion, this office has reviewed the corporate charter of Seven Gens, the transcript and minutes of the May 14, 2005 Special General Tribal Council meeting, the annual audit of the Tribe for FY2007 and FY2008, the audits of Seven Gens for 2006 and 2007, the Audit Law, information developed by the American Institute of Certified Public Accountants and Institute for Internal Auditors, and various other resources. Citations to specific documents, laws and Internet addresses are included to assist the reader in further researching this subject.

There are two areas impacted by this resolution - corporate reporting and auditing. This legal opinion will address the corporate reporting by looking first at Oneida Seven Generations Corporation, then discussing corporations in general, and finally by discussing the proposed audits. In addition, this review will provide recommended amendments to the proposed resolution to better reflect the perceived goals of the petitioner.

Oneida Seven Generations Corporation

Creation - Purpose of Seven Gens

The Oneida Business Committee adopted a charter to create the corporate entity Oneida Seven Generations Corporation through adoption of Resolution # BC-10-16-96-A. The original charter was revoked by Resolution # BC-12-4-96-A and a corrected charter was adopted by Resolution # BC-12-4-96-B. The charter was amended by Resolutions # BC-1-29-97-H, BC-7-9-97-B, and BC-7-13-05-P. The last amendment to the charter was adopted by Resolution # BC-9-27-06-H.

Seven Gens was initially created to manage specific commercial properties. The amendments over the years have allowed Seven Gens to manage a broader range of properties, as well as to enter into various commercial partnerships, referred to as limited liability companies (LLCs), to create economic opportunities and increase revenue. In general, Seven Gens is authorized, "to promote and enhance the business and economic diversification directly as a holding company for real estate and other business ventures of the Nation." *Corporate Charter, Art. VI, sec. A.*

Audited Financial Information

The FY2007 audit reports on the following subsidiary entities of Seven Gens. *Shenck Business Solutions, FY2007 Audit, Note 1.*

Glory, LLC - real estate holding and rental of a manufacturing and office complex in Ashwaubenon. The subsidiary is wholly owned by Seven Gens.

Oneida Generations, LLC - real estate holding and rental of the Travel Mart. The subsidiary is held 51% by Seven Gens and 49% by the Oneida Tribe.

Oneida Nation Electronics (ONE) - manages the purchase/sale activities between International Business Machine Corporation and Pemstar, Inc. This subsidiary is wholly owned by Seven Gens.

The FY2007 audit reports on the following business investment by Seven Gens. *Shenck Business Solutions, FY2007 Audit, Note 3.*

Nature's Way Tissue Corporation - there is a 20% ownership by Seven Gens in this business. The business is the primary tenant of the property managed by Glory, LLC.

In addition, the following investments are also identified in the audit. *Shenck Business Solutions, FY2007 Audit, Note 3.*

Babcock, LLC	Partnership Drive, LLC	North Packerland, LLC
Isabell, LLC	O'Hare, LLC	

The Division of Land Management identifies the following commercial properties managed by Seven Gens through master leases granted by the Oneida Land Commission under authority in the Real Property Law.

Description / Location	Address	Map
Airport Business Center/ Packerland Strip Mall	2615 S. Packerland Drive	4
West Mason Street Mall	2655 - 2669 West Mason	5
Casino Warehouse	2140 Airport Drive	6
U.S. Post Office	N7310 Red Willow	8
Oneida Business Park / Warehouse Building (Food	N7360 Water Circle Place	3
Car Wash Facility	State Hwy. 54	7
Macco Floor Covering Center	2035 Larsen Road	13
Babcock I, LLC / Babcock Property	1630 Comanche Avenue	12
Glory, LLC / Manufacturing Facility	1555 Glory Road	9

Oneida Generations, LLC / 29/32 Travel Mart	Old Highway 29	1
Oneida Generations, LLC / 29/32 Travel Mart (Sign)	Old Highway 29	1
Flightway Office Building / Warehouse	1239 Flightway Drive	2
Packerland Lease	1800 & 1900 Cypress Rd	11
Packerland One Stop	3120 S. Packerland Dr	10
Vision Oneida LLC	Hwy 32	14/15

Finally, the FY2007 audit identifies the following long term notes of Seven Gens.

Interest Rate	2007 Balance of Loan	Date Balance Due
6.75 %	\$ 355,353	July 2010
7.6 %	\$ 4,046,889	July 2010
6.5 %	\$ 500,000	October 2010
7.25 %	\$ 512,864	October 2012
7.5 %	\$ 1,744,453	August 2008
7 %	\$ 870,085	May 2012

Seven Gens also maintains short term debt.

Corporations Generally

Typically, a corporation is owned by the owners of the shares of the corporation. Those shareholders have some rights to information regarding the corporation and its activities which are set by law and/or the corporate charter. Further, there is an ability, through a vote of the shareholders, to direct actions of the corporation.

A corporation is made up of the shareholders in the business, run by a board of directors and operated by an executive officer or general manager. Shareholders are investors in the business and provide capital in return for dividends. Members of the board of directors are entrusted with the responsibility to provide long-term direction for the business. The chief executive officer provides daily management of the business.

The Tribe creates corporations to avoid liability for business activities and risks to Tribal assets. In addition to limiting liability to Tribal assets, the Tribe creates corporations in order to generate business relations that would otherwise avoid working with governmental entities and issues of sovereign immunity. Finally, the Tribe, as a shareholder, has certain rights to information regarding the corporation activities. Both of these subjects - liability and shareholder rights - are outlined in greater detail below.

Liability - Piercing the Corporate Veil

Generally, state laws recognize a corporation as a 'person' for purposes of the actions of the company. As a part of this independent existence, the liabilities of the corporation generally do not flow to those

persons who hold shares in the corporation. However, there are occasions where a court will look beyond the corporate entity to the shareholders and assign liability to individuals.

The Oneida Business Committee has authorized two types of corporate entities - those chartered by the Tribe, and those issued a charter through state law. A corporate charter is subject to interpretation under the laws in which it is created, and a corporations actions are subject to interpretation under the laws in which the corporation is acting. As a result, this review provides general information. Specific actions require additional review based on the facts that arise. The Oneida Tribe does not currently have laws regarding corporations in place. This legal opinion will rely upon Wisconsin law as a basis for this discussion. In addition to applicable law, the charter itself contains directions to the corporation and authority of the shareholder.

As identified above, liability of a corporation is generally limited to the assets of the corporation. However, where the corporation has a small number of shareholders, or in this case where the Tribe is the sole shareholder, liability may pass through the corporation to the Tribe. In those circumstances, the court looks at whether “the corporation is not really a distinct individual, but merely an extension or ‘alter ego’ of its shareholders, being used to advance their private interests[.]” *Larson, A. (2004). Piercing the Corporate Veil, www.expertlaw.com*. Generally, “to prevail on a piercing claim..., a plaintiff must prove: 1) that the defendant shareholder completely dominates the business practice with respect to a subject transaction to the extent that the corporation has ‘no separate mind, will or existence of its own’; 2) that the defendant shareholder used the control to commit fraud or wrong, to violate a statutory or other legal duty, or to act dishonestly or unjustly; and 3) that there was a causal connection between the first two elements and the harm to the plaintiff.” *Hinkston, M. R. (2006). Piercing the Corporate Veil, Wisconsin Lawyer, 79(2)*.

If a court finds that the corporation has been operated for ‘personal purposes’ (in this case upon direction of the Tribe, i.e. the General Tribal Council or the Oneida Business Committee) then the shareholders can be held personally liable. Studies have found that this liability is greater for small closely held corporations. *Larson, A. (2004). Piercing the Corporate Veil, www.expertlaw.com*.

Shareholder Rights

Shareholders in a corporation generally have rights set forth in the corporate charter and under the state laws in which they are incorporated. Under Wisconsin law, the by-laws must include basic information such as the name of the corporation, number and class of shares, authority of the board of directors, and the address of the corporation or the office of its registered agent. *Wis. Stat. 180.0202(1)*. In addition, state law provides that the articles of incorporation may set forth other information, including “defining, limiting and regulating the powers of the corporation, its board of directors and its shareholders.” *Wis. Stat. 180.0202(2)(b)(3)*. In addition to the articles of incorporation, corporations may have by-laws that provide further direction, process, or information. Bylaws “may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with its articles of incorporation[.]” *Wis. Stat. 180.0206*.

The charter of Seven Gens contains the following directions.

The annual business meeting of the Corporation with the Business Committee will be held on the second Tuesday of December for the purpose of receiving reports on the operations of the Corporation, election of board members, and transaction of any other business of the Corporation.
Charter, Art. XI(A).

In addition, Seven Gens is required to file semi-annual reports with the Oneida Business Committee containing the following information.

- the business done and intended to be done by the Corporation;
- material changes and developments since the last report in the business described;
- any material pending legal proceedings to which the Corporation is a party; and
- financial statements of the Corporation, including a consolidated balance sheet and consolidated statement of income and source and application of funds.

Article XII(A-D).

Summary Conclusion - Corporate Information

Under the charter of Seven Gens, significant financial information of the corporation is required to be submitted to the Oneida Business Committee and the General Tribal Council. To that extent, the Secretary or the Oneida Business Committee member assigned as a liaison to corporate entities could be directed to review the charter and reporting information to determine whether it is consistent with the existing charter and whether it is sufficient information to meet the needs of the Tribe.

However, the resolution submitted in the petition directs that individuals or businesses requesting funds from Seven Gens which are Tribal funds, specifically including those who have a financial interest in Seven Gens, must disclose their finances. This would apply to the narrow category of individuals who may be seeking funds in the future. It would be more appropriate to clarify the reporting requirements located in Article XII to obtain this information, rather than by separate resolution.

Further, it appears that the intent of the first two subsections of the Resolve are to identify relationships between Seven Gens and business partners, as well as the owners of those businesses. It is recommended that the initial two directives in the Resolve be deleted and replaced with the following.

1. The Oneida Business Committee is directed to amend all corporate charters to require submission of annual and semi-annual reporting which contains the following information and/or documents.

- a. the business done and intended to be done by the Corporation;
- b. material changes and developments since the last report in the business described;
- c. any material pending legal proceedings to which the Corporation is a party; and
- d. financial statements of the Corporation, including a consolidated balance sheet and consolidated statement of income and source and application of funds.

This office has not reviewed ALL corporate charters as a part of this review. However, the above recommendation would make information providing requirements consistent across all corporations of the Tribe.

Finally, it is recommended that the Oneida General Tribal Council not make directives directly to corporations. These types of directives undermine the “independent” nature of the corporate entity and allows liability for debts from the corporate to be passed directly to the Tribe and Tribal assets. A review of the corporate relationship and corporate records is recommended to better clarify corporate activities of all entities and how those activities can be better reported on to the shareholders.

Audit - Financial and Operational

The resolution submitted in the petition calls for a “full operations and financial audit” of Seven Gens. As identified in the May 5, 2008 legal review regarding the *Dallas/Debraska Petition - Independent Outside Audit of the Tribe*, there are generally recognized two types of audits - financial and performance audits. A performance audit is also referred to as an operational audit.

A financial audit looks at the balances, transactions and internal controls of an entity to ensure the financial information is materially accurate. *Clayton, D. (2005). Unlocking the Mysteries of Operational Auditing: A Focus on Efficient, Value-Adding Operational Audit, New Perspectives, Summer 2005, p. 4.* Seven Gens has an independent financial audit conducted on an annual basis. The most recent external financial audit was conducted by Shenck Business Solutions, Inc.

An operational audit can be described as evaluating “the efficiency and effectiveness of operational controls.” *Clayton (2005), p.4.* The Institute of Internal Auditors, Inc. identifies that operational audits focus on economy (minimizing the cost of resources), efficiency (performing tasks with reasonable effort), and effectiveness (extent to which objectives are met). *IIA (2005). Operational Auditing: Workbook, p. WB 2-2.*

The Internal Audit Department has defined an operational audit as “a review of the processes and procedures within the operation, as well as evaluating the efficiency and effectiveness of business activities. *Christensen, D. (2008). Memorandum.* A financial and operational audit of Seven Gens is currently being conducted by the Internal Audit Department and should be concluded by mid-September 2008. The operational audit has three objectives.

- Review and assess the internal controls, financial records and reporting of the Oneida Seven Generations Corporation and its subsidiaries.
- This includes compliance with the Corporate Charter, By-Laws, resolutions and Contracts, and a review of business venture activity and relationships, as well as Board governance activities.
- This also includes assessing the adequacy and reporting of return on investments, asset ownership and Board financial activity.

Christensen (2005).

Summary Conclusion - Audit

It is not necessary to conduct the audits requested in the proposed resolution. The finances of the corporation are audited by an independent auditor, and an operational audit is currently being conducted by the Tribe’s Internal Audit Department. This audit is reported to the Audit Committee which is

authorized under the Audit Law to forward audit reports to the Oneida Business Committee for further action.

It is recommended that the final directive in the Resolve be amended as follows.

2. The Oneida Business Committee is directed to review all corporate entities regarding finances and operations to determine the effectiveness and efficiencies of those corporate entities. A report on corporate entities is directed to be included in the Annual General Tribal Council meeting materials, or earlier if determined by the Oneida Business Committee to be needed.

Since all corporations are created for the purposes of protecting assets of the Tribe and allowing business to be conducted such a comprehensive review would be beneficial to re-establish the goals and purposes of those corporate entities.

Conclusion

This resolution is directed at obtaining information regarding the activities of the Oneida Seven Generations Corporation and to direct that audits be conducted of that entity. However, a review of the resolution identifies potential liability issues that are raised if the corporate entity is directed by the General Tribal Council which undermines the reason for creating the corporation.

Adoption of the proposed resolution is likely to result in liability to the Tribe which does not currently exist. This liability is estimated at \$7,390,664 regarding outstanding loans entered into by a single corporation. Although the loans are taken for construction projects regarding commercial buildings, it would change the nature of the Tribe's liabilities and necessary reporting regarding the Tribe's loan documents. Nothing in these Tribal loan documents would prohibit adoption of the resolution, notwithstanding the violation of loan covenants that require the Tribe to maintain certain financial balances and debt ratios.

Recommendations have been made in this review to direct action to be taken which respects the independent nature of the corporation, and reflects the need to review all corporate entities of the Tribe. In addition, since Seven Gens is already subject to an external financial audit, and is being reviewed regarding an operational audit by the Tribe's Internal Audit Department, it is not necessary to re-audit financially or to audit operationally pending the conclusion of the current audit activity.

The following recommendations are made to replace Resolve in this resolution with the following language.

NOW THEREFORE BE IT RESOLVED that the Oneida Business Committee is directed to withhold future financial distributions to any corporation of the Tribe until the following actions have been taken.

1. The Oneida Business Committee is directed to amend all corporate charters to require submission of annual and semi-annual reporting which contains the following information and/or documents.

a. the business done and intended to be done by the Corporation;

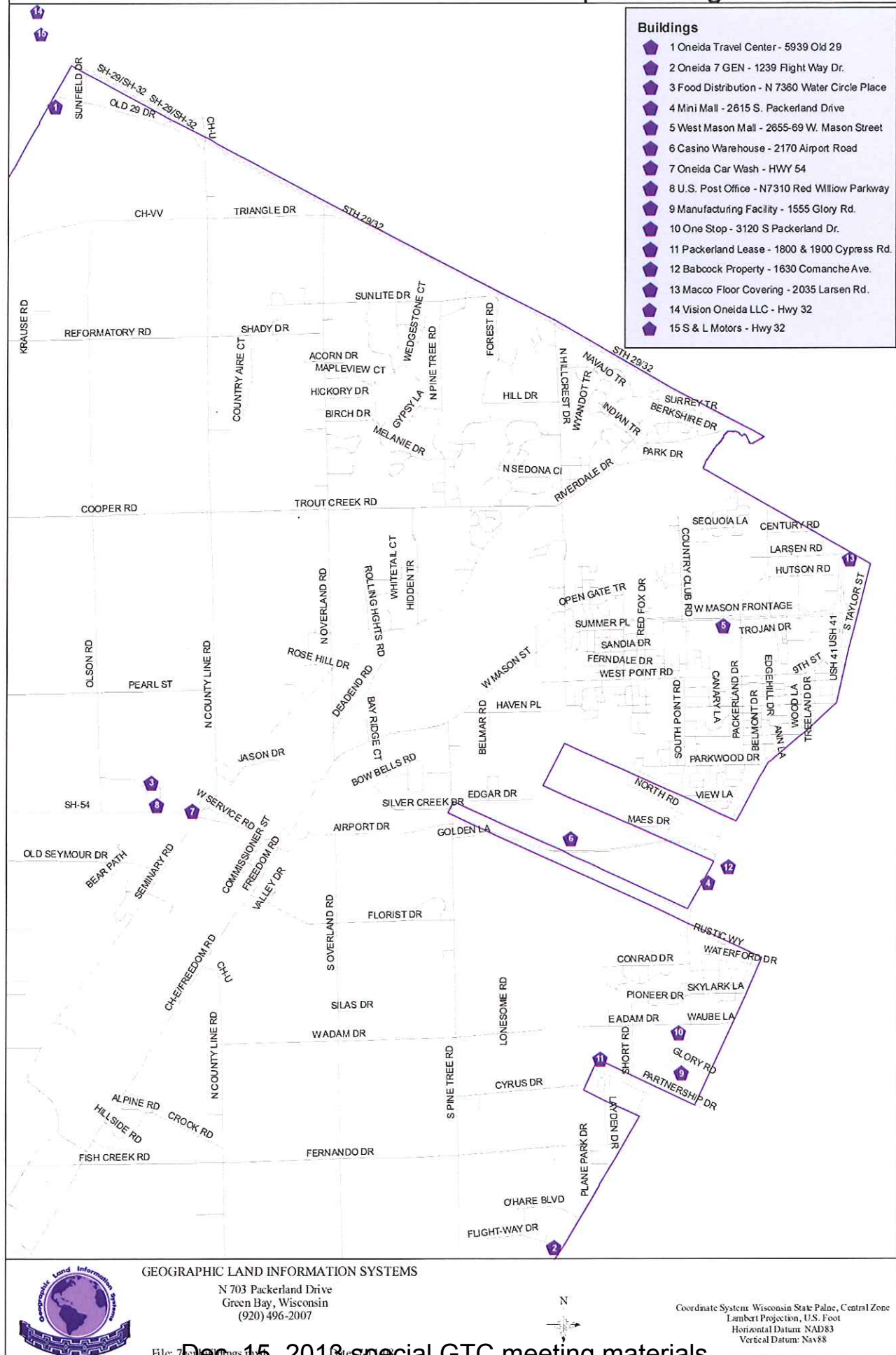
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- b. material changes and developments since the last report in the business described;
 - c. any material pending legal proceedings to which the Corporation is a party; and
 - d. financial statements of the Corporation, including a consolidated balance sheet and consolidated statement of income and source and application of funds.
2. The Oneida Business Committee is directed to review all corporate entities regarding finances and operations to determine the effectiveness and efficiencies of those corporate entities. A report on corporate entities is directed to be included in the Annual General Tribal Council meeting materials, or earlier if determined by the Oneida Business Committee to be needed.

An alternative resolution with the above recommendations is attached to this legal review.

This resolution would require a majority vote to adopt.

If you have further questions, please contact me.





Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin



P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040

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UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

GTC RESOLUTION # _____

Directing Review of Corporate Charters and Identifying Reporting Requirements

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States, and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council, and

WHEREAS, the General Tribal Council has identified concerns with actions of corporate entities of the Tribe and the information provided by the corporate entities to the Tribe; and

WHEREAS, the General Tribal Council believes that directing a review of corporate charters and corporate activities is needed in order to standardize information presented by corporate entities to the Tribe and to verify that information is available to the Tribe in order to make long term decisions;

NOW THEREFORE BE IT RESOLVED that the Oneida Business Committee is directed to withhold future financial distributions to any corporation of the Tribe until the following actions have been taken.

1. The Oneida Business Committee is directed to amend all corporate charters to require submission of annual and semi-annual reporting which contains the following information and/or documents.

- a. the business done and intended to be done by the Corporation;
- b. material changes and developments since the last report in the business described;
- c. any material pending legal proceedings to which the Corporation is a party; and
- d. financial statements of the Corporation, including a consolidated balance sheet and consolidated statement of income and source and application of funds.

2. The Oneida Business Committee is directed to review all corporate entities regarding finances and operations to determine the effectiveness and efficiencies

GTC Resolution # _____
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of those corporate entities. A report on corporate entities is directed to be included in the Annual General Tribal Council meeting materials, or earlier if determined by the Oneida Business Committee to be needed.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of ___ members present at a meeting duly called, noticed, and held on the ___ day of ___, 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in anyway.

Tribal Secretary
ONEIDA BUSINESS COMMITTEE

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CHIEF COUNSEL
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M E M O R A N D U M

TO: Oneida Business Committee
FROM: Jo Anne House, Chief Counsel
DATE: February 15, 2011 - Revised
SUBJECT: Genskow Petition – Resolution – Oneida Seven Generations Corporation

You have requested a legal opinion regarding a resolution submitted with a petition by Madelyn Genskow. The number of signatures on the petition have been verified by the Enrollment Department. The resolution, in pertinent part reads as follows.

Whereas, the Oneida Tribal members have a right to know all business of the tribe.

Now Therefore be it Resolved, that the General Tribal Council directs the Business Committee to report on potential damage to government relationships as a result of corporate actions with discussion on how as a government we will respond to it.

Be it Resolved, that the General Tribal Council request discussion on the terms of the tribes agreement with Seven Generations and the potential of changing that agreement to bring about reporting to the Business Committee and the General Tribal Council on legal, political and fiscal matters.

Be it Resolved, that action may take place on these topics.

To develop this opinion, I have reviewed the Constitution of the Oneida Tribe of Indians of Wisconsin, the By-laws of the Oneida Tribe of Indians of Wisconsin, the corporate charter of the Oneida Seven Generations Corporation, the minutes of General Tribal Council meetings, and various prior legal opinions regarding corporations.

Background

Corporations – Tribes – Purpose

The following information was presented in a legal opinion dated July 10, 2008. *Genskow Petition – Resolution – Oneida Seven Generations Corporation, July 10, 2008.*

Typically, a corporation is owned by the owners of the shares of the corporation. Those shareholders have some rights to information regarding the corporation and its activities which

are set by law and/or the corporate charter. Further, there is an ability, through a vote of the shareholders, to direct actions of the corporation.

A corporation is made up of the shareholders in the business, run by a board of directors and operated by an executive officer or general manager. Shareholders are investors in the business and provide capital in return for dividends. Members of the board of directors are entrusted with the responsibility to provide long-term direction for the business. The chief executive officer provides daily management of the business.

The Tribe creates corporations to avoid liability for business activities and risks to Tribal assets. In addition to limiting liability to Tribal assets, the Tribe creates corporations in order to generate business relations that would otherwise avoid working with governmental entities and issues of sovereign immunity. Finally, the Tribe, as a shareholder, has certain rights to information regarding the corporation activities. Both of these subjects - liability and shareholder rights - are outlined in greater detail below.

Liability - Piercing the Corporate Veil

Generally, state laws recognize a corporation as a 'person' for purposes of the actions of the company. As a part of this independent existence, the liabilities of the corporation generally do not flow to those persons who hold shares in the corporation. However, there are occasions where a court will look beyond the corporate entity to the shareholders and assign liability to individuals.

The Oneida Business Committee has authorized two types of corporate entities - those chartered by the Tribe, and those issued a charter through state law. A corporate charter is subject to interpretation under the laws in which it is created, and a corporations actions are subject to interpretation under the laws in which the corporation is acting. As a result, this review provides general information. Specific actions require additional review based on the facts that arise. The Oneida Tribe does not currently have laws regarding corporations in place. This legal opinion will rely upon Wisconsin law as a basis for this discussion. In addition to applicable law, the charter itself contains directions to the corporation and authority of the shareholder.

As identified above, liability of a corporation is generally limited to the assets of the corporation. However, where the corporation has a small number of shareholders, or in this case where the Tribe is the sole shareholder, liability may pass through the corporation to the Tribe. In those circumstances, the court looks at whether "the corporation is not really a distinct individual, but merely an extension or 'alter ego' of its shareholders, being used to advance their private interests[.]" *Larson, A. (2004). Piercing the Corporate Veil, www.expertlaw.com*. Generally, "to prevail on a piercing claim..., a plaintiff must prove: 1) that the defendant shareholder completely dominates the business practice with respect to a subject transaction to the extent that the corporation has 'no separate mind, will or existence of its own'; 2) that the defendant shareholder used the control to commit fraud or wrong, to violate a statutory or other legal duty, or to act dishonestly or unjustly; and 3) that there was a causal connection between the first two elements and the harm to the plaintiff." *Hinkston, M. R. (2006). Piercing the Corporate Veil, Wisconsin Lawyer, 79(2)*.

If a court finds that the corporation has been operated for 'personal purposes' (in this case upon direction of the Tribe, i.e. the General Tribal Council or the Oneida Business Committee) then the

shareholders can be held personally liable. Studies have found that this liability is greater for small closely held corporations. *Larson, A. (2004). Piercing the Corporate Veil, www.expertlaw.com.*

Shareholder Rights

Shareholders in a corporation generally have rights set forth in the corporate charter and under the state laws in which they are incorporated. Under Wisconsin law, the by-laws must include basic information such as the name of the corporation, number and class of shares, authority of the board of directors, and the address of the corporation or the office of its registered agent. *Wis. Stat. 180.0202(1)*. In addition, state law provides that the articles of incorporation may set forth other information, including “defining, limiting and regulating the powers of the corporation, its board of directors and its shareholders.” *Wis. Stat. 180.0202(2)(b)(3)*. In addition to the articles of incorporation, corporations may have by-laws that provide further direction, process, or information. Bylaws “may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with its articles of incorporation[.]” *Wis. Stat. 180.0206*.

Oneida Seven Generations Corporation

The Oneida Business Committee began developing the concept of the Oneida Seven Generations Corporation when it approved a grant application in 1995. *Resolution # BC-10-25-95-B*.

WHEREAS, the national priority of the Oneida Tribe is to ensure a stable Oneida economy that sustains our sovereign government, family, community and affords all members the opportunities to participate in the economic resources, and

WHEREAS, the Oneida Tribe through the Oneida Development Division is to provide and expand a stable land and economic base in order to increase the quality of life for the Nation and its members, and

WHEREAS, the Oneida Tribe believes the community will be revitalized by diversifying our economy, and renewable financial resources that are generated through the development of ventures which have long range “Seventh Generation” potential.

The end result of this grant was the development of the Oneida Seven Generations Corporation created by the adoption of Resolution # BC-10-16-96-A.

WHEREAS, it is in the best interest of the Oneida Tribe of Indians of Wisconsin to charter a tribal corporation to promote and enhance the business and economic development of the Oneida Tribe (*Whereas #5*).

This charter was granted under the authority set forth in the Constitution under Article IV, section 1(h).

To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

The right to ‘review’ identified in this section was defined by Resolution # GTC-12-69 as to change or amend.

The current corporate charter of the Oneida Seven Generations Corporation identifies the following purposes for the corporation in Article VI.

- (A) To promote and enhance the business and economic diversification directly or as a holding company for real estate and other business ventures of the Nation.
- (B) To purchase, take, receive, lease, solicit, take by gift, devise or bequest or to otherwise acquire, hold, improve, use and otherwise deal in and with money, real and personal property, rights and services of any kind and description, or any interest therein.
- (C) To buy, sell, mortgage, pledge, lease, hold, transfer and assign all or any part of the Corporation's property and assets, PROVIDED, that title to all trust or restricted real or personal property of the Oneida Nation must be and remain in its trust or restricted status for the Oneida Nation which includes the necessary approval of the Oneida Land Commission or its successor.
- (D) To enter into, make, perform and carry out contracts, and to receive financial assistance from any governmental or private source and to expend its funds in furtherance of its purpose.
- (E) To waive only the sovereign immunity the Corporation possesses for the purposes of dispute resolution or contract enforcement in contracts, agreements or other similar documents for the furtherance of the Corporation's business and/or purpose.
- (F) To develop business development opportunities, PROVIDED that such activities comply with the laws the Oneida Nation and policies of the Corporation.
- (G) To hire, discharge, train and supervise all labor and employees required for the purpose of the Corporation through consensus of the OSGC Board of Directors.
- (H) To elect or appoint officers and agents of the Corporation and define their duties and fix their compensation, PROVIDED that such elections or appointments comply with the laws of the Oneida Nation and the policies of the Corporation.
- (I) To amend and alter by-laws, consistent with the charter or the executing of the affairs of the Corporation.
- (J) To sue and be sued in its Corporate name as herein specifically provided to the extent allowed by Oneida tribal, state or federal law upon any contract, claim or obligation of the Corporation arising out of the accomplishment of its purposes. Recovery against the Corporation is limited to the assets of the Corporation. The Oneida Nation will not be liable and its property or assets will not be expended for the debts or obligations of the Corporation.
- (K) To purchase insurance for any property, real or personal, or person against any risks or hazards.
- (L) To establish and maintain bank accounts as may be necessary or convenient.
- (M) To borrow money and to issue temporary or long term evidence of indebtedness of the Corporation and repay the same.
- (N) To pledge and otherwise encumber the assets of the Corporation as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property and interests therein.
- (O) To set up separate corporate business systems and processes; i.e. LLC's and LLP's, etc.
- (P) To take further actions as are commonly engaged in by corporate bodies, as the Board of Directors may deem reasonably necessary to effectuate the purposes of the Corporation.

Relationship of Corporation to the Tribe

The Oneida Business Committee, on behalf of the Tribe, created the Oneida Seven Generations Corporation. The Tribe owns all of the shares in the corporation. However, as identified above, the corporation was created as a separate entity to allow the corporation to conduct business

without the hindrance of third parties having to work with a government or to negotiate sovereign immunity concerns. As a result, the corporation is given a significant amount of independence. This is balanced by the appointment of members of the Board of Directors by the Oneida Business Committee as well as quarterly reporting requirements.

The difficulty is maintaining a separateness of the Tribe from the corporate actions and the perceptions of the community at large. The corporation is intended to be independent, but it is in some facets guided by the philosophy of the Tribe. Further, the corporation has the power to take actions that would not otherwise be approved by the Tribe, whether that is the Oneida Business Committee or General Tribal Council. The response of the Tribe to these types of actions is extreme within the charter – dissolution. The reason for this limited response is identified above, to avoid the political aspects of a government directing the actions of the corporation.

These relationships can be changed to provide more direction to the corporation. However, this affects the corporation's ability to maintain and develop relationships with other companies. For example, would the corporation have been able to partner with Bellin or Badger Sheet Metal, or would have been able to rent facilities to Maaco or Schneider? Further, if the change were made, would the Tribe be jeopardizing these existing relationships? There may be discussion needed to identify how to set further philosophical guidelines for Oneida Seven Generations Corporation, as well as other corporations.

Reporting Requirements

The Oneida Seven Generations Corporation has, in the corporate charter, a requirement to report to the Tribe four specific times a year – twice to the Oneida Business Committee and twice to the General Tribal Council. These reports require the following information to be submitted.

- A. The business done and intended to be done by the Corporation;
- B. Material changes and developments since the last report in the business described;
- C. Any material pending legal proceedings to which the Corporation is a party; and
- D. Financial statements of the Corporation, including a consolidated balance sheet and consolidated statement of income and source and application of funds. *Corporate Charter, Article XIII.*

The General Tribal Council has discussed reporting requirements on several occasions. The most recent occurred on November 15, 2008. At this meeting the General Tribal Council was presented a petition which requested approval of a resolution prohibiting further investment in Oneida Seven Generations Corporation until it had completed financial disclosures related to every subsidiary and partnership of Seven Generations and a complete financial and operational audit had been conducted. The Oneida Business Committee recommended an alternative resolution which was ultimately adopted. *Resolution # GTC-11-15-08-B, Directing Review of Corporate Charters*. This resolution directed the Oneida Business Committee to develop and adopt amendments to corporate charters which set forth standard requirements for reporting.

The Oneida Business Committee adopted Resolution # BC-01-26-11-A which set forth standard reporting requirements for Oneida Seven Generations Corporation. The new reporting requirements set forth reporting in a public report and a confidential report. The confidential

report can be viewed by members; however it will be maintained in a confidential manner. The report forms are described below and in the following table as originally presented by Kathy Hughes, Vice-Chairwoman to the Oneida Business Committee in 2009.

- A narrative report is considered that report that is typically delivered to the shareholders. This type of a report identifies the activities and accomplishments of the corporation, provides information regarding goals and future activities, and a financial report.
- A financial report provides greater information regarding the corporate financial activities. This is the type of report that would be received by the Board of Directors.
- A disclosure report identifies relationships within the corporation regarding the primary officials. This type of report would be received by an Audit Committee.

Report	Audience	Timing	Location	Public/Confidential
Narrative	GTC BC	Annually Quarterly	Annual Report BC Packets On-line Library	Public
Financial	BC Treasurer Audit Committee	Quarterly *1 audited *3 unaudited *As requested	BC Packets Treasurer Audit Committee	Confidential Available to Members
Disclosure	Audit Committee BC Treasurer	Annually	Audit Committee Treasurer	Confidential Available to Members

The reporting requirements are included in Article XIII of the attached Oneida Seven Generations Corporation charter, and have been incorporated into every other corporate charter by individual resolutions.

Actions of Oneida Seven Generations

This petition asks for information regarding how the actions of Oneida Seven Generations Corporation affecting the Tribe's relationships with local governments. This question arises out of the issues surrounding the waste-to-energy project proposed by the corporation.

Initially this project began through a grant application by the Tribe to the Department of Interior. The grant application was developed by the Oneida Seven Generations Corporation and presented to the Tribe for consideration. The Oneida Business Committee approved the grant application to be submitted by the Tribe through Resolution # BC-06-23-10-B. The grant was conducted by contract with Oneida Seven Generations Corporation to finalize the project review of a proposed waste-to-energy project. The findings were favorable to begin finalization of the business plan.

A second grant application was submitted in order to help complete the project, and Oneida Seven Generations has received approval of a loan guarantee allocation by the Department of Interior to construct the building for the business. In the interim, Oneida Seven Generations Corporation began finalizing the approvals to lease the necessary land from the Tribe and obtain agreements for the transportation of local garbage for the waste-to-energy process.

Initially, Oneida Seven Generations Corporation was requesting use of property adjacent to the Brown County Waste Transfer Station as it has preliminary approval for waste contracts with Brown County. The Land Commission approved the issuance of a lease of fee land behind the Brown County Waste Transfer Station.

In order to avoid conflicts in the construction and operations of the business, Oneida Seven Generations Corporation began to obtain permits from the Tribe as well as approval to access a road owned and operated by the Village of Hobart. Representatives of the Tribe were kept informed as to the progress of the access request. The Village of Hobart approved an access agreement for Dead End Road, however that agreement required the corporation to act on behalf of the Tribe, agree to the jurisdiction of the Village in regards to building permits, and other matters. The corporation requested the Village to remove the language in the agreement which was contrary to existing federal Indian law and exceeded the corporation's authority on July 19, 2010. However, they received no response from the Village and the corporation was forced to walk away from this location. The Oneida Business Committee was informed of these actions, but at no time was the easement presented to the Oneida Business Committee for consideration or action.

Oneida Seven Generations Corporation then began looking at existing properties it already had under lease. This led to looking at two parcels. The industrial complex which currently houses Little Bear, the United States Post Office, and Nori Damrow Food Distribution buildings, was determined to be inappropriate because it was outside of the working area of the energy provider the corporation had contracted with to sell the energy it was creating. The cost of creating the connection would have exceeded the potential revenues.

This led to selection of the trust property on Packerland in the Village of Ashwaubenon which was already under a master lease with the corporation. The corporation brought a presentation to the permitting committee of the Village of Ashwaubenon as a presentation of information, permitting from the Village of Ashwaubenon was not necessary as the land was trust property and permits would be issued from the Tribe.

Several issues have impacted the development of this location. First, the Village of Ashwaubenon objected to the positioning of the building on behalf of Schneider National which indicated it negatively impacted its business and property values. The Oneida Seven Generations Corporation and Schneider National met to discuss the issues. With the financial backing of Schneider National the building was repositioned farther back on the site and Schneider National's complaint was withdrawn. However, the Village of Ashwaubenon continues to argue that the proposed business is not appropriate in this area it had developed as a light industrial office park, as well as the number of garbage trucks would negatively impact traffic. Finally, during this period, neighbors have begun objecting to the project as being placed too close to homes, schools and other activities in the area. The Oneida Seven Generations Corporation continues to conduct public relations information sessions regarding the project and its impact on the community.

At the time of this opinion, the Oneida Seven Generations Corporation has begun obtaining all appropriate permits from the Tribe and federal agencies regarding water discharge and air permits. Until these permits or authorizations have been obtained, the Tribe's building permit has been placed on hold and no further construction is authorized.

The Oneida Business Committee adopted Resolution # BC-12-8-10-B which identifies that "...the Oneida Business Committee enthusiastically supports this project and will work with [Oneida Seven Generations Corporation] and Oneida Energy to help them realize the opportunity and to locate the facility on a site that is most desirable. The resolution does not indicate a specific location, but identifies support of an environmentally friendly project that reduces landfill garbage, creates energy, and useful by-products.

This project continues to be developed by the Oneida Seven Generations Corporation. At the same time, the Oneida Business Committee has met with the Board of Directors of the corporation to express its concerns about the confusion regarding the corporate versus Tribe in these actions and to monitor that the project continues to fall within tribal philosophies.

Conclusion

This resolution is a request to have information presented at a meeting during which discussion and action can take place. Although the resolution would require another meeting to be called to respond to the requests in this resolution, this opinion has attempted to be responsive to the concerns raised. If adopted, there are limitations on actions that can be taken by the General Tribal Council. It is not possible to list those limitations, but in general, any action affecting a prior contract entered into under existing authorities would be out of order under the rules.

Adoption of this resolution would require a simple majority vote.

If you have further questions, please contact me.

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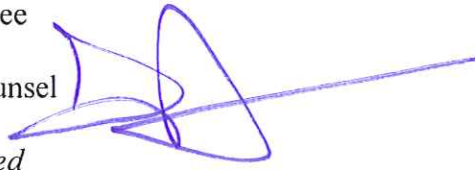
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CAROYL J. LONG

MEMORANDUM

TO: Oneida Business Committee
FROM: Jo Anne House, Chief Counsel
DATE: March 12, 2013 - *Corrected*
SUBJECT: Dodge – Petition – Land Use – Oneida Seven Generations Corporation



You have asked for a legal review of the above petition submitted by Leah Sue Dodge. The petition contains the following request.

General Tribal Council directs the Oneida Business Committee to stop Oneida Seven Generations Corporation (OSGC) from building any 'gasification' or 'waste-to-energy' or 'plastics recycling' plant at N7329 Water Circle Place, Oneida, Wisconsin or any other location within the Oneida Tribal boundaries.

The petition contains 82 signatures, of which 79 were verified by the Enrollment Department.

To develop this opinion, this office has reviewed the Constitution of the Oneida Tribe of Indians of Wisconsin, minutes and resolutions of the General Tribal Council and Oneida Business Committee, laws of the Tribe, and various other resources. Citations to specific documents, laws and Internet addresses are included to assist the reader in further researching this subject.

There are two areas impacted by this resolution – land use and corporations. This legal opinion will address each of these separately.

Background – Responsibility for Land Related Decisions

The Constitution of the Oneida Tribe of Indians of Wisconsin authorizes the General Tribal Council, "to veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets of the tribe." *Article IV, Section 1(c)*. Since adoption of the Constitution the General Tribal Council has exercised its powers regarding the land, including delegating that authority to the Executive Committee and ultimately to the Land Committee, now Land Commission. This section will review those delegation actions.

Since 1941 the Oneida Tribe has had some law or policy statement regarding the land within the Reservation. Ordinance No. 1 – Lands was adopted by the General Tribal Council on February 28, 1941. This law created the Land Committee with three members appointed by the Executive

Committee to make recommendations regarding land assignments. The Land Committee recommendations were approved by the Executive Committee.

The General Tribal Council discussed land acquisition and the priority over the years. The first official policy statement regarding the land occurs in 1977 by adoption of resolution # GTC-1-8-77-B.

Whereas, land now held by the Oneidas will be the foundation of tomorrow's Oneida Tribal people.

Now Therefore be it Resolved, that the General Tribal Council of the Oneida Tribe of Indians of Wisconsin instruct the Business Committee to secure the future of the Tribe through the maintenance and reacquisition of all Oneida lands, including those lands now designated as the Sacred Heart Center.

Three months later, the General Tribal Council adopted resolution # GTC-4-16-77-B. This resolution directed that, "...an Oneida Tribal land office be established, and that adequate staff be provided to maintain all land records for the Tribe." The purpose of this resolution was to identify adequate support for the Land Committee in processing land transactions.

In 1980, the Oneida Business Committee re-recognized the responsibilities of the Land Committee and the expansion of the committee from three members to seven members. This resolution identified that the terms of office would continue to be staggered from one- to three-year terms. In 1981 and for successive years thereafter, the Oneida Business Committee adopted resolutions requesting the Bureau of Indian Affairs to approve a self-governance contract for the provision of land services. In addition, the Oneida Business Committee adopted updated rules for land assignments. Finally, in the following year the General Tribal Council set aside funding for the purpose of land acquisition.

In 1986, the General Tribal Council adopted resolution # GTC-1-6-86-A. This resolution identified that, "...the Land Committee shall be involved in all land purchases for the Oneida Tribe and upgrade and develop Tribal fee land, and Tribal Trust Land."

These land related responsibilities were formally established under Tribal law by adoption of resolution # BC-5-29-96-A adopting the Real Property Law. This law codified prior General Tribal Council directives. In addition, the Oneida Business Committee adopted the law in accordance with delegated authority of the General Tribal Council and in compliance with the procedures adopted by the General Tribal Council as set forth the Administrative Procedures Act.

Most recently, the General Tribal Council considered a petition to change the appointment of Land Commissioners by the Oneida Business Committee to election by the membership. The petitioner identified reason for this proposed change as the Land Commission being equally as important as Land Claims Commission, Gaming Commission. Resolution # GTC-5-14-05-A, adopted by the General Tribal Council, directed that Land Commissioners be elected positions and directed, "...the Oneida Business Committee request a special election as timely as possible to fill the board with elected seats after going through the APA process."

The actions of the General Tribal Council, beginning in 1941, identify a desire to have land related decisions made by an independent entity. And, the last action of the General Tribal Council in 2005 directing that Land Commissioners be elected by the membership confirms this long term position by creating a level of independence to the elected body. As a result, actions directly affecting the land, such as purchase and leasing, are delegated by the General Tribal Council fully to the Land Commission. The General Tribal Council has retained two processes regarding these decisions – the first is selection of Land Commissioners during the election processes, and second is removal of elected officials under the Removal Ordinance.

Background – Corporations

The Constitution of the Oneida Tribe of Indians of Wisconsin authorizes the creation of corporations in Article IV, Section 1(h).

To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the tribe, any of the forgoing powers [as set forth in this Section], reserving the right to review* any action taken by virtue of such delegated power.

* As defined by resolution # GTC-12-69, “review” means to change or amend.

Since adoption of the Oneida Business Committee has created corporations to act in a business capacity for the Tribe. The following is a brief listing of corporations. The list may not include all prior corporate entities of the Tribe.¹

- 1984: *Oneida Airport Hotel Corporation* – created in 1984 and still in operation. This corporation was created to develop and manage a hotel which began under a Rodeway Inn franchise logo and now operates under a Radisson Inn franchise logo. The corporation also purchased and operates the Wingate.
- 1988: *Oneida Enterprise Development Authority* – created in 1988, purpose redirected in 1995, dissolved in 2004, re-chartered and purpose redirected in 2004, and still in operation. This corporation originally began as the enterprise to develop the Tribe’s convenience stores. The corporation then developed the Einstein mobile phone business after which it was dissolved. The re-chartered corporation is delegated responsibility for development of land claims related business activities in the State of New York.
- 1993: *Oneida Airport Business Development Corporation* – created in 1993 and dissolved in 1999. This corporation was created to manage lands of the Tribe. All assets were returned to the Tribe and all leases were transferred to the Oneida Seven Generations Corporation to manage.
- 1994: *Oneida Construction Corporation* – created in 1994 and dissolved in 1998. This corporation was created to act as a general contractor and subcontractor in construction projects. All assets were returned to the Tribe upon dissolution.
- 1994: *Oneida Nation Electronics* – created in 1994 and all shares purchased by Oneida Seven Generations Corporation, still in operations as a subsidiary corporation. This

¹ For example, it is not clear if the Utilities Commission was a corporate entity, or simply an independent government agency.

corporation was created to act in partnership with Plexus to create computer electronics, the corporation continues limited involvement in the technology industry through a partnership with a third party vendor.

- 1995: *Oneida Seven Generations Corporation* – created in 1995 and still in operation. This corporation was created as a commercial land management company, now holds several master ground leases, created subsidiary corporations to manage partnerships and loans related to the construction of facilities of managed properties, and operates a construction company.
- 2007: *Oneida Total Integrated Enterprises* – created in 2007 and still in operation. This corporation was created to receive the assets of an ongoing business (TN&A) and continues to manage and increase governmental contracting opportunities under a federal minority business program.
- 2009: *Oneida Golf Enterprise* – created in 2009 and still in operation. This corporation was created to manage the Thornberry Creek Golf Course business and related property.
- 2012: *Oneida ESC Group, LLC* – created in 2012 and still in operation. This corporation is the next generation of Oneida Total Integrated Enterprises to manage the succession of the federal minority contracting opportunities.

In addition to the above, the Tribe is the sole owner of Baybancorporation that operates Bay Bank under federal and state banking regulatory authority.

Finally, the Tribe was issued a federal corporate charter under the Indian Reorganization Act. This charter is not utilized by the Tribe for various legal reasons, including issues surrounding sovereign immunity.

All corporations of the Tribe are granted authority by the Oneida Business Committee adopting a corporate charter to act in a business-like manner. In addition, all corporation retain the sovereign immunity of the Tribe for their actions. In relation to land leased to the corporation by the Tribe, the corporation is prohibited from encumbering or otherwise pledging the land as collateral without express permission from the Tribe. Corporations are expected to report on their activities four times a year – Annual and Semi-Annual General Tribal Council meetings and twice to the Oneida Business Committee. At least one of those reports must include the annual audit conducted by the corporation. All corporations are expected to return profits to the Tribe, except in cases where the Oneida Business Committee has authorized the corporation to retain the profits in order to build the business.

Corporations are created for the purposes of carrying out business in an environment that the Tribe would likely not be successful. In some circumstances, businesses are more comfortable doing business with other business entities, not governments. In addition, there are times when the Tribe desires to protect the assets of the Tribe as a whole and creates a corporation to limit liabilities to the corporate assets (excluding the land). Finally, sometimes a corporation is able to move quicker regarding business decisions than the Tribe.

The Oneida Seven Generations Corporation, as identified above, was created by the Oneida Business Committee to manage commercial lands owned by the Tribe. This action was taken in accordance with the authority delegated by the General Tribal Council on August 30, 1969, to

the Oneida Business Committee. Further, it is consistent with the 1982 action directing that the Oneida Business Committee focus on legislative actions. Finally, it is consistent with multiple discussions and directives of the General Tribal Council regarding the development of enterprises and diversification.

A corporation, once created, begins taking actions which create commitments with financial institutions, vendors, other business partners, to name a few. The Oneida Seven Generations Corporation, as identified in a 2008 legal opinion, carries approximately \$8 million in loans leases on approximately 15 different commercial properties, and over three corporate business partnerships. The complexity of unwinding these relationships or changing the authority of the corporation should be considered prior to any action being taken.

Unlike actions affecting the land identified earlier in this opinion, there is no legislation currently in place regarding corporations. Opinions regarding General Tribal Council, and even Oneida Business Committee, actions have generally revolved around liability issues. Two recent actions occurred regarding petitions submitted in 2008 and in 2011.

In 2008 a petition submitted by Madelyn Genskow requested the General Tribal Council to consider a resolution which called for financial disclosures, names of persons or entities with financial interests and conducting a financial audit by an external auditor. Primarily this petition was the result of an earlier interaction between the corporation and the Treasurer involving access to financial information related to a specific business transaction by the corporation. The legal opinion identified that shareholders of corporation (i.e. the Tribe) have access to certain information as defined in Tribal law and the corporate charter. The result of this petition was adoption of resolution # GTC-11-15-08-B, *Directing Review of Corporate Charters*.

This resolution directed the Oneida Business Committee to review all corporate charters to require consistent and greater amounts of information. This resulted in the Oneida Business Committee adopting amendments to all corporate charters, specifically resolution # BC-1-26-11-A amending the charter of Oneida Seven Generations Corporation.² A copy of these reporting requirements is attached to this memo.

2011 Petition – Corporate Activities

In 2011, Madelyn Genskow filed a petition regarding the impact of the actions of Oneida Seven Generations Corporation on tribal government relations. The corporation was, and remains, involved in starting a pyrolysis plant. The plant would use household waste, excluding recyclable materials, to create multiple by-products – electricity, re-usable char, and the capturing of various gases to name a few. The new process was originally proposed on tribal land behind the Brown County Waste Transfer Station that was physically close to the waste materials. Because access to the site was being negatively impacted by demands from the Village of Hobart, the corporate considered moving the proposed plant to Water Circle Drive Industrial Park.

² The charter for Baybankcorporation was not included in this series of amendments as a result of external banking regulatory authorities. However, the bank board has been notified of the format and substantially complies with the reporting requirements.

The corporation's primary goal of the proposed plan was sale of the energy by-product on the electrical grid. The Water Circle location was problematic because it was outside the electrical grid for which contracts had already been negotiated. The contracts with the alternative grid were not beneficial to the corporation and connection with the proposed grid was too expensive.

The third proposed site for the plant was the Packerland Industrial Park owned by the Tribe located in Ashwaubenon. Although the plant would have been within the zoned activities and was designed to fit in with the existing business designs, the Village of Ashwaubenon expressed concerns about the appropriateness of the 'fit' of the proposed plant in this area. In addition, residential property owners in the area also began expressing their concerns.

The petition was presented at a General Tribal Council meeting in May 2011. After lengthy discussion regarding the proposed project, the following motion was made.

...motion that Seven Generations provide documented answers on a complete financial report and audit to the General Tribal Council at the July 2011 semi-annual GTC meeting and that the GTC will carry out this motion to determine whether or not to retain Seven Generations Corporation[.]

Upon request of the chair, a parliamentarian opinion identified that the motion would be out of order for two reasons. First, that the motion is not clear regarding what would be reported to the General Tribal Council. Second, that the motion appeared to affect the continued existence of the corporation. It was recommended that the General Tribal Council could direct the Oneida Business Committee to dissolve the corporation in order to comply with the corporate charter and the complexities of dissolving the financial and contractual agreements the corporation had entered into over the course of its existence. The Chair ruled the motion out of order.

After a brief discussion, a motion to accept the report delivered by the corporation at the meeting. An amendment to the motion requiring, among other things, the Treasurer and Chief Financial Officer to present a report on their opinion of the validity of the project, was accepted and failed to pass. The General Tribal Council ultimately just accepted the report.

In light of these public issues, the corporation accepted an offer from the City of Green Bay to locate the plant in the city's industrial zone. A conditional use permit was issued to the corporation to begin the process of gathering final federal approvals and other applicable agencies. At the conclusion of the conditional use permit period, the City of Green Bay declined to issue a permanent permit because the City Council felt that it had been misinformed regarding the construction aspects of the plant. The corporation challenged this decision and lost that challenge at the trial court level. At the time of this opinion, the corporation was still in the process of deciding whether it would appeal this decision.

The corporation then revised the proposed plant plans, focusing on oil recovery and utilizing partially refined waste plastics with little focus on energy output except for use by the plant

itself. The proposed site is in the Water Circle Industrial Park.³ The corporate board has authorized consideration of the site with a formal decision to be made upon confirmation of zoning and permitting approvals. At the time of drafting this opinion, the Land Commission, after public comments, has approved a zoning variance in accordance with the Zoning Ordinance.

Corporate Loan for Project

The corporation appears to have two sets of loans and a grant for the purposes of construction of the plant – federal Bureau of Indian Affairs Office of Indian Energy and Economic Development, a loan from the Wisconsin Economic Development Corporation, and a State of Wisconsin energy grant. This office has rendered an opinion regarding the liability to the Tribe arising out of the federal loan guaranty of the approximately \$24 million loan. This is a federal guaranty of a private lender loan to Oneida Seven Generations Corporation in the event of default. To the extent that funding has been obtained and used by the corporation, the corporation would be responsible for paying back those funds. The corporation has also obtained a state grant for \$2 million and a loan from the state for \$2 million. The corporation is responsible for carrying out the activities for which the grant was given, failure to do so would require the corporation to repay the grant.

Analysis

This petition requests the General Tribal Council to consider action that would direct the Oneida Business Committee to stop Oneida Seven Generations Corporation from building a pyrolysis plant on the Reservation. As identified above, the General Tribal Council does not have authority to affect decisions regarding allocation or zoning of land within the Reservation because it fully delegated land use authority. Further, it is not within the authority of the Oneida Business Committee to take actions affecting allocation or zoning of land within the Reservation because the General Tribal Council delegated that authority to the Land Commission and the Oneida Business Committee codified that delegation in the Real Property Law and Zoning Ordinance.

However, it is within the authority of the General Tribal Council to direct the Oneida Business Committee, within its capacity as the shareholder of all the shares in the corporation, to take certain actions. The retained authority in the charter adopted by the Oneida Business Committee limits these actions by the General Tribal Council and Oneida Business Committee.

The charter for Oneida Seven Generations Corporation identifies that the shareholder, as represented by the Oneida Business Committee, appoints members to the corporate board, can remove those members for certain activities, and can dissolve the corporation. However, the

³ The Industrial Park is home to the Little Bear Development Center, a U.S. Post Office, the Nori Damrow Food Distribution Center, the vacant Tower Foods building, a solar panel array and a water tower. The Oneida Farmer's Market temporarily used part of the green space next to Little Bear Development Center during construction of the round-about at Seminary and State Highway 54. It is not clear if this is intended to be a long term location.

charter can be amended by the Oneida Business Committee to allow further ability to direct the actions of the corporation.

As identified in the 2008 legal review of the Genskow petition regarding financial disclosures, taking action that allows the Oneida Business Committee greater authority to direct the corporation's actions may result in greater liability to the Tribe for the debts and expenses of the corporation. Even if the action were limited to prohibiting construction and operation of a pyrolysis plant, there are liabilities tied to this restriction.

Oneida Seven Generations Corporation has two outstanding funding sources for the pyrolysis plant – a state grant and a federal guaranty of a private loan. Both of these funding sources would be in default if the corporation is unable to complete the project. Although nothing in this petition suggests that the corporation cannot operate a plant at all, the corporation is limited via the state funding to operations within the State of Wisconsin. It is not clear if there is a deadline by which operations must commence; however, it is presumed that the lending sources will not wait indefinitely for the plant to begin operations. Action by the General Tribal Council, and subsequently by the Oneida Business Committee, may result in liability for repayment of these funds by the Tribe because its actions were so close to operations of the corporation that there is no significant difference between the two.

Conclusion

The petition calls for action that is within the authority of the General Tribal Council to take if no part of that action affects land use, zoning or land allocation. Although it would be clearer for the General Tribal Council to direct the Oneida Business Committee to amend the corporate charter for Oneida Seven Generations Corporation to prohibit the development or operation of a pyrolysis plant within the Reservation. Further, because the motion would affect no prior actions of the General Tribal Council, only a simple majority vote is needed.

However, caution is recommended in taking this action as there may be liability arising out of existing loan agreements, expenditures and contracts entered into by the corporation. Any action taking prohibiting the corporation may result in liability being transferred to the Tribe for becoming too involved in corporate activities.

If you have further questions, please contact me.

CORPORATE REPORT MODEL

The Secretary or other designated reporting officer of the Corporation shall file reports with the Oneida Business Committee and General Tribal Council in accordance with this Article. Reports shall be prepared at least annually to coincide with the annual meeting of General Tribal Council, with other reports quarterly to the Oneida Business Committee or as required by the Business Committee as the shareholder/member of the corporation.

Section 1: Narrative Report

- (A) Definition: Narrative report is defined generally as contextual and non-financial information reported with financial information in order to provide understanding of the corporation's business done, market position, strategies, performance and future expectations. The Narrative report should include topics and information covering four broad categories of information, including 1) Market overview; 2) Strategy and Structure of the Corporation; 3) Management of value of the Corporation; and 4) Performance of the Corporation over the reporting period.
- (B) Components of Report: Narrative reports should include, but are not limited to, at a minimum, the following components in a comprehensive means for easy distribution and understanding:
 - a. Explanation of the core of the Corporation's business practices and market overview.
 - b. Explanation of the Corporation's current place within the market.
 - c. Explanation of the outlines of strategies by the Corporation for improved value in the market.
 - d. Explanation of the Corporation's relative performance vs. competitors and identification of key competitors within the market.
 - e. Explanation of any material changes or developments in the market or nature of business the Corporation is primarily engaged in since the last reporting period.
 - f. Identification of the primary goals and targets of the Corporation and progress made towards accomplishment of the same.
 - g. Identification of key elements for success in strategies given, including risks, resources and relations available and needed in order to successfully fulfill outlined strategies.
 - h. Identification of medium (two to five year) and long (greater than five year) prospects and sustainability of the Corporation given present status, strategies and risks.
 - i. Explanation of market growth(if any) experienced by the Corporation, identifying sources of growth (i.e. organic growth through market share increase, volume of business increase, acquisition of competition or other assets, etc.).
 - j. Summary of the assets of the Corporation, including but not limited to its financial, physical, employee, customer, brand or intellectual property, and supply assets.
 - k. Summary and status update of any pending legal action to which the Corporation is a party and any relevant government regulation to which the Corporation may be subject.
- (C) Report Due Date: Narrative reports are due in time for the annual meeting of General Tribal Council generally held in July of each year, meaning it should be submitted no later than May 31st of each year unless GTC changes its meeting date or some other date is issued by the Business Committee.

- (D) Narrative Report Access: The Narrative report is one submitted to the Business Committee and General Tribal Council of the Oneida Tribe. It is considered a public report and shall be made available to the public through the office of the Secretary and/or the Oneida website or other available means.

Section 2: Financial Report

- (A) Financial Report Defined: The Financial report is the formal record of the financial activities of the Corporation. Such statements shall be presented in a structured and understandable manner consistent with Generally Accepted Accounting Principles (GAAP).
- (B) Financial Report Content: the Financial report shall include information in the following broad categories including but not limited to: 1) an executive summary or broad overview; 2) a balance sheet of the Corporation's financial position listing assets and liabilities; 3) income statement reporting the income, expenses and general profit over the reporting period; 4) statement of retained earnings; and 5) statement of cash flow.
- (C) Financial Report Due: Financial Reports are due quarterly to the Oneida Business Committee with copies to the Oneida Treasurer and Chair of the Oneida Audit Committee and as otherwise demanded by the Oneida Business Committee as the representative owner of the Corporation.
- (D) Financial Reports are subject to an annual audit by auditors from the Oneida Tribe or by third party auditors as hired by the Oneida Tribe at the Corporation's expense detailing the fairness and accuracy of the financial reports. The audit reports shall be submitted as attachments to the financial reports as they are done and completed with each applicable reporting period.
- (E) Financial Report Access: Financial reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Financial reports are accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information. They may be disclosed with permission of the Corporation's Board and/or the Owner for economic solicitation purposes or as demanded by the Owner.

Section 3: Disclosure Report

- (A) Disclosure Report Defined: Disclosure reports financial and familial relationships and connections between the Corporation and other entities, as well as members of the Corporation's Board and key management personnel. Any financial or legal relationship, ownership interest, or any blood kinship within the Corporation and its financial practices or partnerships shall be detailed in a structured and easy to understand format.
- (B) Disclosure Report Content: The Disclosure report shall include, but not be limited to, the following detailed information:
 - a. Names and title of all of the Corporation's Board members' names, time in the position, and date when position shall be up for renewal or replacement (if applicable).
 - b. Names and title of all of the Corporation's key management personnel, with length of service in that position, and if under contract, when that position is up for renewal or expiration of the contract term.
 - c. Summary of any financial or familial relationship between any of the people in part a. or part b. in this Section, as well as any relationship, financial or familial with any current member of the Oneida Business Committee or any member of any regulatory body within

- Oneida such as a board committee or commission charged with regulating the Corporation's industry or activities.
- d. Names of any other person, whether it be a business in any legal form or an individual, doing business with the Corporation for purposes of mutual enterprise (i.e. including but not limited to: joint ventures; membership in an LLC together; acquisition as a subsidiary; partnership).
 - e. Summary of the financial transactions or relationship between those listed in d. above in this Section and the Corporation, including the purpose of the mutual enterprise, legal relationship, or other connection between the Corporation, its Board or its key management personnel and this other named entity or person.
- (C) Disclosure Report Due: An annual report to the Oneida Business Committee is due concurrently with the narrative report, as well as whenever there is a change to the Corporation's Board membership, turnover to key management personnel, or a business venture creating a new partnership, LLC, subsidiary, or any other legal entity connected to the Corporation for any purpose.
- (D) Disclosure Report Access: Disclosure reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Disclosure reports are submitted to the Oneida Business Committee and accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information.

ONEIDA TRIBE OF INDIANS OF WISCONSIN

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'A DEMOLUM YATEHE
use of the help of
Oneida Chief in
entering a friendship
between the six nations
of the colony of
Pennsylvania, a new
nation, the United States
made possible.

ONEIDA FINANCE OFFICE

Office: (920) 869-4325 ✧ Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: November 13, 2013

FROM: Larry Barton, Chief Financial Officer

TO: Tina Danforth, Treasurer
Oneida Business Committee

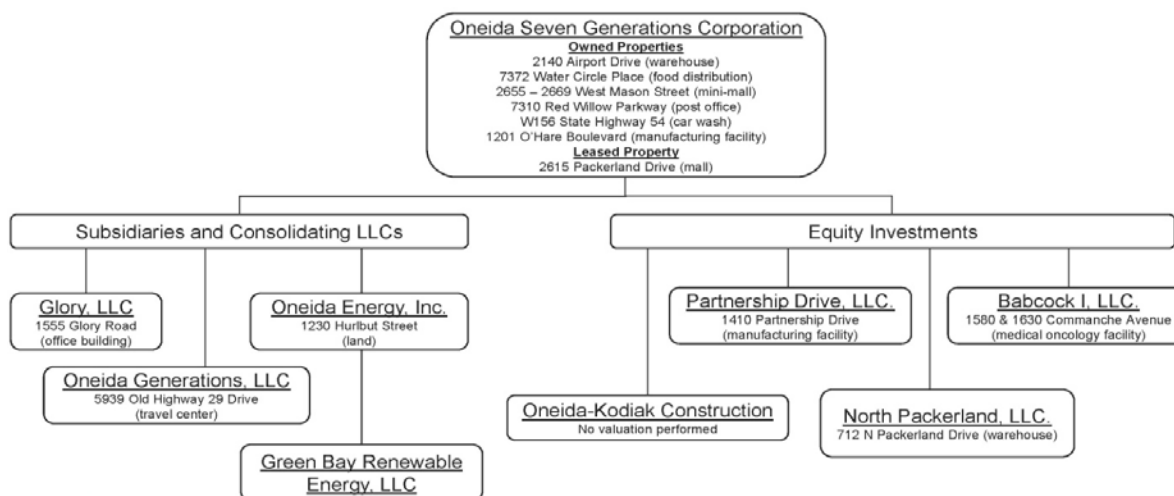
RE: **Financial Impact of Petition - Dissolution of Oneida Seven Generations Corporation**

I. Background

Under consideration is a Petition to the General Tribal Council submitted by Frank Cornelius which would direct the Business Committee to dissolve the Oneida Seven Generations Corporation. The petition had the requisite number of Tribal member signatures. The petition did not specify any detailed reasoning supporting its request for dissolution. The final dissolution decision will be subject to a vote by the members of the General Tribal Council.

II. Executive Summary of Findings

Corporate Structure of Oneida Seven Generations Corporation



Dissolution Process: Voluntary Transfers versus Involuntary Transfers

Careful legal analysis needs to be performed prior to the passing of a resolution of dissolution to ensure such a resolution would not trigger an involuntary transfer because of the following:

- OSGC does not have unilateral rights to transfer its interest in the business ventures.
- The operating agreements for each business venture have specific provisions governing the transfer and withdrawals of interests on both a voluntary and involuntary basis.
- The dissolution process must be conducted in a manner that does not trigger the involuntary transfer provisions of the LLC agreements.

Entity	Book Value from Business Venture Balance Sheet	Fair Market Value Determined by McGladrey Business Valuation Group	<u>Voluntary</u> Transfer Price ("The Offer" or "Purchase Price")	<u>Specified Involuntary</u> Transfer Price ("The Offer" or "Purchase Price")
Babcock I, LLC	(\$322,000)	\$9,614,000	Offer Price	Book Value
North Packerland, LLC	\$45,000	\$150,000	Offer Price	Book Value
Partnership Dr, LLC	\$449,000	\$1,033,000	Offer Price	80% of Fair Market Value

Based on the table above, if the dissolution is deemed to be an involuntary transfer, in the case of Babcock I, LLC, the OSGC would have to pay the Babcock partners \$322,000 and would lose the assets held by Babcock. This would result in a "loss" to OSGC of \$9,936,000 in an involuntary transfer scenario.

The book value represents OSGC's percentage ownership of the historical basis of the respective entity less depreciation as of September 30, 2013. Depreciation that is attributable to the property is assigned to the partner. Because OSGC is a nontaxable entity, OSGC does not need the benefit of depreciation taken on the related property for tax purposes.

The fair market value represents OSGC's percentage ownership of the current fair market value of the property as determined as of September 30, 2013.

A voluntary transfer would be a situation where two parties arrive at a mutually agreed upon price for the transfer.

An involuntary transfer would be a situation where the operating agreement stipulates that the transfer of assets would be at a specified price.

Debt Agreements

A majority of the loan agreements do not allow obligations to be transferred to another entity without lender consent. Out of thirteen loan agreements, eight loan agreements, totaling \$7.8 million contain specific provisions allowing the lender to accelerate and immediately call the

outstanding obligation. The remaining five loan agreements for OSGC and its entities total \$17.6 million.

Dissolution Timeline, Transaction and Other Costs

Assuming no litigation or other unforeseen events, the process of dissolution could take 10-12 months.

Transactional Costs (including, but not limited to) would relate to hiring outside legal counsel, financial, engineering, and environmental due diligence professionals, maintaining OSGC staff to assist through the dissolution process and various filing fees. Professional fees to third parties are estimated to exceed \$100,000 if the vote is to dissolve.

Other Costs (including, but not limited to) would related to the loss of corporate structure, loss of diversification and liability protection on the Tribe's own financial positions with OSGC dissolution, potential loss of ability to maintain rent control, the potential triggering of involuntary transfer provisions through the results of the dissolution.

III. Financial Impact

The minimum financial impact of a dissolution of Oneida Seven Generations Corporation would be the having to pay down the eight loan agreements which contain provisions which allow the lenders to accelerate the outstanding debt. This would be an immediate impact of \$7.8 million.

However, there is a potential of the Tribe being forced to pay down all debts of OSGC and its entities, which would be a total of \$25.4 million. Moreover, if the transfers of assets to partners is found to be an involuntary transfer, then OSGC would lose out on \$10,247,600 in the Fair Market Value of the underlying assets. There would also be expected fees to third party professionals in excess of \$100,000.

TOTAL ESTIMATED IMPACT: \$7.8 million - \$35,647,700 or more, depending on amount of professional fees.

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.